

### REMARKS

Claims 1-36 are presently pending in the case. Claim 1 has been amended. Claims 10, 23, and 33 are withdrawn from consideration but should be considered in that they depend from an allowable base claim, as discussed below.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

#### **Claim rejections under 35 USC 102**

The Examiner rejected claims 1 and 17 under 35 USC 102(b) as being anticipated by PCT application WO94/16759 to Ritson et al (hereinafter Ritson et al). The rejection is traversed.

Ritson et al does not anticipate claims 1 and 17. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1, for example, is to an aerosol drug delivery system comprising, inter alia, a disposable container adapted to contain a drug formulation and an aerosol generator for aerosolizing the drug formulation in response to manual actuation. In contrast, Ritson et al describes an automatic breath-actuated system (see page 1 lines 4-7). Since Ritson et al does not disclose all positively recited features, a section 102 rejection is precluded. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereunder.

In the Office Action, the Examiner directs Applicant to page 17 line 25 through page 18 line 2 of Ritson et al in support of the rejection. The recitation referred to involves the removal of the device from the housing. However, when not within the housing, the Ritson et al device is without the "prevention device" recited in Applicant's claim 1. During a telephone conversation with Examiner Patel on October 15, 2003, the Examiner explained that the spring within the metering valve could, if interpreted very broadly, be considered a prevention device. The Examiner went on to posit that that a user's hand and a user's mind could be construed as a prevention device. Though Applicant disagrees with these interpretations, Applicant has amended claim 1 to point out that the "prevention device" is electronic and that the change of

state is due to a current. Clearly, a mechanical spring and a user's hand and mind fail to anticipate the new language.

Claim 17 has not been amended. Claim 17 recites "in response to manual actuation" which distinguishes Ritson et al in the constructed version, and recites "supplying electrical current to the lockout device" to distinguish Ritson et al in the disassembled version.

The balance of the claims have not been rejected and are believed to be in allowable form.

**Conclusion**

The Examiner is respectfully requested to consider and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

NEKTAR THERAPEUTICS  
(formerly INHALE THERAPEUTIC  
SYSTEMS)

Dated: 24 OCT 03

By: 

Guy Y. Tucker  
Reg. No. 45,302

Please send all correspondence to:  
Guy Tucker  
Nektar Therapeutics  
(formerly Inhale Therapeutic Systems, Inc.)  
150 Industrial Road  
San Carlos, CA 94070  
Phone: (650) 620-5501  
Fax: (650) 631-3125

RECEIVED  
CENTRAL FAX CENTER  
OCT 24 2003

OFFICIAL